

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

Jeff Foster

Plaintiff,

vs.

PNC Bank, National Association;

Defendant.

No. 12 CV 3130

Honorable Joan B. Gottschall

**DEFENDANT PNC BANK, NATIONAL ASSOCIATION'S MOTION FOR SUMMARY
JUDGMENT ON PLAINTIFF JEFF FOSTER'S COMPLAINT AND DEFENDANT'S
COUNTERCLAIMS**

Defendant PNC Bank, National Association ("PNC"), pursuant to Fed. R. Civ. P. 56 and L.R. 56.1, moves this Court for entry of an Order granting it summary judgment on the Third Amended Complaint ("Complaint") of Jeff Foster ("Foster") in its entirety. PNC previously filed a Motion to Dismiss Foster's Complaint, which the Court, in its order dated December 14, 2015, granted in part. The following claims remain:¹

- Count One—Violation of the Fair Credit Billing Act (Illinois Loan)
- Count Two—Violation of the Fair Credit Reporting Act (Illinois Loan and Florida Loan);
- Count Three—Breach of Contract (Illinois Loan);
- Count Four—Breach Contract (Florida Loan);
- Count Five—Breach of Implied Duty of Good Faith and Fair Dealing (Florida Loan);

¹ Foster raised claims related to five loans he has with PNC. Three of the loans were for rental properties in Illinois. This Court dismissed the claims related to the Illinois rental properties were time barred. Those three loans are no longer at issue in this litigation. The Court also dismissed Counts Six and Nine (there is no Count Eleven) and Count Twelve related to the Florida Loan.

- County Seven—Fraud (Florida Loan);
- Count Eight—Unjust Enrichment and Disgorgement (Florida Loan); and
- Count Ten—Breach of Fiduciary Duty (Florida Loan)

PNC also moves this Court for entry of an Order granting it summary judgment on its Counterclaims for judgment on the Florida Note and judgment on the Illinois Note and Foreclosure of the Illinois Mortgage.

In support of its Motion, PNC submits a Statement of Undisputed Material Facts in accordance with Local Rule 56.1(a)(3), a memorandum of law, and attaches the following:

- Exhibit A—Affidavit of Dorothy Thomas, with supporting exhibits;
- Exhibit B—Affidavit of Thomas Morris, with supporting exhibits;
- Exhibit C—PNC Bank, National Association’s Verified Responses to Foster’s Supplemental Discovery Requests;
- Exhibit D—Foster’s Amended Response to Certain Defendant PNC Bank, National Association’s First Set of Interrogatories;
- Exhibit E—Expert Report of Ellen Mulcrone Schuetzner;
- Exhibit F—Documents from the Florida Office of Insurance Regulation;
- Exhibit G—Deposition Transcript of Jeffrey Foster;
- Exhibit H—Deposition Transcript of Thomas Morris;
- Exhibit I—Deposition Transcript of Dorothy Thomas.

For all of the foregoing reasons, Defendant PNC Bank, National Association respectfully requests the Court to grant: (1) summary judgment in its favor against Plaintiff, Jeff Foster on his Complaint in its entirety, pursuant to Fed. R. Civ. P. 56(c); (2) summary judgment in its favor against

Plaintiff, Jeff Foster, on PNC's counterclaims, and (3) such other and further relief in its favor as the Court deems appropriate.

Respectfully submitted,

PNC BANK, NATIONAL ASSOCIATION

By: /s/ Marcel C. Duhamel

One of its Attorneys

Marcel C. Duhamel, Esq. (Ohio Bar No. 0062171 *pro hac vice*)

Lindsay Doss Spillman (Ohio Bar No. 0086849 *pro hac vice*)

Vory's Sater, Seymour & Pease, LLP

200 Public Square, Suite 1400

Cleveland, OH 44114

(216) 479-6100

MCDuhamel@vorys.com

ldspillman@vorys.com

James M. Crowley, Esq. (ARDC 6182597)

John F. Sullivan, Esq. (ARDC 6205900)

Plunkett Cooney, PC

221 N. LaSalle Street, Suite 1550

Chicago, IL 60601

(312) 670-6900

jcrowley@plunkettcooney.com

jsullivan@plunkettcooney.com